



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN - 3 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5939 2720

Mayor Daniel J. Dwyer
City Hall
62 Washington Street
Rensselaer, NY 12144

Re: Administrative Order CWA-02-2010-3032
City of Rensselaer Municipal Separate Storm Sewer System
NPDES Permit No. NYR20A125

Dear Mayor Dwyer:

The United States Environmental Protection Agency (EPA), Region 2, has made a finding that the above-named facility, City of Rensselaer ("Respondent"), is in violation of the Clean Water Act (33 U.S.C. § 1251 *et seq.*) ("the Act") for National Pollutant Discharge Elimination System ("NPDES") violations as described in the findings to this Order. Enclosed are two (2) originals of this ORDER, issued pursuant to Sections 309 and 308 of the Act, which detail the findings.

Please acknowledge receipt of this ORDER on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed ORDER may subject the facility to civil/criminal penalties pursuant to Section 309 of the Act. Failure to comply with this ORDER shall also subject the facility to ineligibility for participation in work associated with Federal contracts, grants or loans.

If you have any questions regarding this Order, please contact Ms. Justine Modigliani, Team Leader, NPDES Team, at (212) 637-4268.

Sincerely,

A handwritten signature in black ink, appearing to read "D. LaPosta", is written over a horizontal line. Below the signature is a small, stylized mark that looks like a checkmark or a flourish.

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joe DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC

bcc: Pat Harvey, DECA-CAPS w/enclosure
Justine Modigliani, DECA-WCB w/enclosure
Christy Arvizu, DECA-WCB w/enclosure
Kimberly McEathron, DECA-WCB w/enclosure

Address:

Joe DiMura, P.E.
Director, Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3506

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

City of Rensselaer
62 Washington Street
Rensselaer, NY 12144

SPDES Permit No. NYR20A125

Proceeding pursuant to Sections 308(a) and
309(a)(3) of the Clean Water Act, 33 U.S.C.
§§ 1318(a) and 1319(a)(3)

RESPONDENT

ADMINISTRATIVE
COMPLIANCE ORDER

CWA-02-2010-3032

The following Findings of Violation are made, and Order for Compliance ("Order") issued, pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1318(a) and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

A. Legal Authority

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary. Additionally, under the authority delegated to the New York State Department of Environmental Conservation ("NYSDEC") by the EPA under Section 402(b) of the Act, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities in New York State by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) to include an individual, corporation, partnership, association or municipality.
5. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
6. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
7. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) to include the waters of the United States.
8. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12) to include any addition of any pollutant to navigable waters from any point source.
9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems ("MS4s").
10. 40 C.F.R. § 122.26(b)(8), defines an MS4 as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a city, town, borough, county, parish, district, association, or other public body (created by State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works..."
11. 40 C.F.R. § 122.26(b)(3) defines "incorporated place," in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
12. 40 C.F.R. § 122.26(b)(16)(ii) defines "small municipal separate storm sewer system," in part, as not defined as "large" or "medium" municipal separate storm sewer systems.
13. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an "urbanized area" (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
14. 40 C.F.R. §§ 122.33(a) and (b) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Notice of Intent ("NOI") for coverage under such permit.

15. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-08-002) ("Permit") on April 15, 2008. The permit became effective on May 1, 2008 and expires on April 30, 2010. The permit supersedes the previous SPDES permit (GP-02-02), which was effective on January 8, 2003 and expired on January 8, 2008. The previous permit was administratively extended until April 15, 2008, when SPDES GP-0-08-002 was issued. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-10-002) and became effective on May 1, 2010 and expires on April 30, 2015. The permit supersedes the previous SPDES permit (GP-0-08-002).
16. Part IV.A of the Permit requires the permittee to develop, implement and enforce a Storm Water Management Program ("SWMP") designed to reduce the discharge of pollutants to the maximum extent practicable ("MEP").
17. Part IV.D of the Permit requires the permittee to develop an initial SWMP prior to March 10, 2003 and provide adequate resources to fully implement the SWMP no later than January 8, 2008.
18. Part IV.F of the Permit requires the permittee to develop and implement a SWMP that satisfies the requirements of the six minimum control requirements ("MCM") in Part VII of the Permit.
19. Part V.A of the Permit requires the permittee to conduct an annual evaluation of its program compliance, the appropriate BMPs, and progress towards achieving its identified measurable goals, which must include reducing the discharge of pollutants to the MEP.
20. Part V.B of the Permit requires the permittee to keep records required by this permit for at least five (5) years after they are generated. The permittee shall keep duplicate records (either hard copy or electronic), to have one copy for public observation and a separate working copy where the permittee's staff, other individuals responsible for the SWMP and regulators can access them.
21. Part V.C.1 of the Permit requires annual reports to be submitted by the permittee and received by NYSDEC by June 1 of each reporting year.
22. Part V.C.3.f of the Permit requires annual reports submitted by the permittee to contain at a minimum any change in identified BMPs or measurable goals and justification for those changes.
23. Part VII.A.1.a of the Permit requires the permittee to identify Pollutants of Concern ("POCs"), waterbodies of concern, geographic areas of concern and target audiences.
24. Part VII.A.1.b of the Permit requires the permittee to develop and implement a public outreach program.
25. Part VII.A.3.a of the Permit requires the permittee to develop, implement and enforce a program to detect and eliminate illicit discharges (Illicit Discharge Detection and Elimination "IDDE" Program).

26. Part VII.A.3.g of the Permit requires the permittee to develop and implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4. The program must include: procedures for identifying priority areas of concern (geographic, audiences or otherwise) for IDDE program; description of priority areas of concern, available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions.
27. Part VII.A.4.a of the Permit requires the permittee to develop, implement and enforce a Construction Site Stormwater Runoff Control Program that addresses stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre (control of stormwater discharges from construction activity disturbing less than one acre must be included in the program if construction activity is part of a larger common plan of development or sale that would disturb one acre or more, or if controlling such activities in a particular watershed is required by the NYSDEC).
28. Part VII.A.6.a of the Permit requires the permittee to develop and implement a Pollution Prevention/Good Housekeeping Program for municipal operations and facilities that contribute or potentially contribute pollutants of concern to the small MS4.

B. Factual Background

1. The City of Rensselaer ("Respondent") is a municipal corporation chartered under the laws of the State of New York, and as such, Respondent is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an "incorporated place" as defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns/operates the MS4, located in the City of Rensselaer, Rensselaer County, New York and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. The MS4 in the City of Rensselaer is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).
4. An MS4 is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. Respondent's MS4 discharges stormwater, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to the Quackenderry Creek, Mill Creek and tributaries to the Hudson River, a water of the United States within the meaning of 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2, and as such, discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. Respondent submitted a Notice of Intent ("NOI") and a Storm Water Management Program ("SWMP") to NYSDEC on March 4, 2003, seeking coverage under the SPDES permit (GP-02-02). Permit coverage was obtained on March 25, 2003 (NYR20A125). Permit coverage was maintained under subsequent permits GP-0-08-002 and GP-0-10-002.

7. EPA, accompanied by NYSDEC, conducted a compliance audit of Respondent's MS4 on November 17-19, 2009.
8. SPDES General Permit (GP-0-08-002) ("Permit") effective on May 1, 2008 was the effective permit at the time of the inspection.

C. Findings of Violation

As described in greater detail in the enclosed CEI report, at the audit on November 17-19, 2009, EPA inspectors observed the following violations of the Respondent's SPDES permit (GP-0-08-002):

1. Respondent failed to provide adequate resources to fully implement the SWMP no later than January 8, 2008 and to make steady progress toward full implementation, in violation of Part IV.D of the Permit:
 - a. Respondent failed to create a widely accessible webpage as identified in the SWMP as an outreach technique; and
 - b. Respondent failed to distribute stormwater regulations and guidelines with every building permit and site plan review as specified in the SWMP.
2. Respondent failed to properly maintain records including duplicate records of documents pertaining to the SWMP for at least five (5) years after they are generated, in violation of Part V.B of the Permit.
3. EPA reviewed Respondent's Annual Reports from 2005 through 2009 and found that Respondent failed to submit an annual report by June 1 of the respective reporting year for four of the five years, in violation of Part V.C.1 of the Permit. The due dates for annual reports, the dates NYSDEC received the reports and the amount of days the reports were overdue are listed in the table below:

Due Date	Date Received	Days Overdue
June 1, 2005	June 8, 2005	7
June 1, 2006	December 14, 2006	196
June 1, 2007	May 31, 2007	Not Overdue
June 1, 2008	January 21, 2009	234
June 1, 2009	June 12, 2009	11

4. Respondent failed to explain changes made to municipal operations selected and the scheduled dates for IDDE training, planned BMP implementation and the public annual report review meeting in the submitted Annual Reports evaluated (2006-2009) in violation of Part V.C.3.f of the Permit.

5. Respondent failed to develop and implement a public education and outreach program, in violation of Part VII.A.1 of the Permit:
 - a. Respondent failed to identify POCs, waterbodies of concern, geographic areas of concern and target audiences, in violation of Part VII.A.1.a of the Permit;
 - b. Respondent failed to develop and implement an ongoing public education and outreach program, in violation of Part VII.A.1.b of the Permit; and
 - c. Respondent failed to select appropriate education and outreach activities and measurable goals to ensure reduction of all POCs in stormwater discharges to the MEP, in violation of Part VII.A.1.d of the Permit.
6. Although Respondent has an active Illicit Discharge Detection Program for identifying illicit discharges and connections, there is no formal written plan or protocol for eliminating identified illicit discharges and connections. Respondent failed to develop and implement a program to detect and address non-stormwater discharges that includes procedures for identifying priority areas of concern for the IDDE program; a description of priority areas of concern, available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges; procedures for eliminating illicit discharges; and procedures for documenting actions, in violation of Part VII.A.3.g of the Permit.
7. Respondent failed to develop, implement and enforce a construction site stormwater program that meets the requirements in the Permit, in violation of Part VII.A.4 of the Permit:
 - a. Respondent failed to conduct construction site stormwater inspections, maintain and generate inspection reports in accordance with the City's construction site stormwater program at the City's high school demolition project, Valley View and the Eastland Park construction sites, in violation of Part VII.A.4.a.i of the Permit;
 - b. Respondent failed to ensure that the individual(s) performing the inspections are adequately trained and understand the State and local sediment and erosion control requirements, in violation of Part VII.A.4.a.ix of the Permit; and
 - c. Respondent failed to keep construction site inspection records for at least five (5) years after they are generated, in violation of Part V.B of the Permit.
8. Respondent failed to develop and implement a Pollution Prevention/Good Housekeeping for Municipal Operations program that meets the requirements of the Permit, in violation of Part VII.A.6 of the Permit:

- a. Respondent failed to develop and implement a pollution prevention/good housekeeping program that addresses municipal operations and facilities that contribute or potentially contribute or potentially contribute POCs to the small MS4 system, in violation of Part VII.A.6.a.i of the Permit;
 - b. Respondent failed to perform a self assessment of all municipal operations addressed by SWMP to determine sources of pollutants and identify the municipal operations and facilities at a minimum frequency of once every three years, in violation of Part VII.A.6.a.ii of the Permit;
 - c. Respondent failed to determine management practices, policies, procedures, etc. that will be developed and implemented to reduce or prevent the discharge of (potential) pollutants such as spill response procedures, in violation of Part VII.A.6.a.iii of the Permit;
 - d. Respondent failed to prioritize and address pollution prevention and good housekeeping efforts, in violation of Parts VII.A.6.a.iv and VII.A.6.a.v of the Permit;
 - e. Respondent failed to describe the management practices, policies and procedures that have been developed and report accurately the number of catch basins inspected and cleaned and the amount of debris removed, in violation of Part VII.A.6.d.ii of the Permit; and
 - f. Respondent failed to report on the effectiveness of program, BMP and measurable goal assessment, in violation of Part VII.A.6.d.iv of the Permit.
9. On the basis of the Findings cited in the Paragraphs 1-8 above, the Respondent is in violation of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318 and applicable implementing regulations.

D. Ordered Provisions

Based on the Findings of Violation set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions:

1. Immediately upon receipt of the original copies of this Order, a responsible official of the City of Rensselaer shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to Justine Modigliani, NPDES Team, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope, to the address listed below.
2. Respondent shall develop, implement and enforce a Storm Water Management Program (SWMP) that meets the requirements in Part IV of the effective Permit.

3. Respondent shall complete the following items in accordance with the schedule listed below:

<u>Item</u>	<u>Completion</u>
Create a widely accessible webpage as an outreach technique, as required in the SWMP.	September 30, 2010
Distribute stormwater regulations and guidelines with all building permits and site plans reviewed, as required by SWMP.	Immediately
Maintain records including duplicate records of documents pertaining to SWMP for at least five (5) years after they are generated as required by Part V.B of the effective Permit.	Immediately
Submit to EPA and NYSDEC a written explanation for the overdue 2005, 2006, 2008 and 2009 annual reports.	June 30, 2010
Begin submitting annual reports on time.	June 1, 2010
Submit to EPA and NYSDEC a written explanation for changes made to municipal operations selected and the scheduled dates for IDDE training, planned BMP implementation and the public annual report review meeting in the submitted Annual Reports evaluated (2006-2009).	June 30, 2010
Develop, implement, and submit to EPA and NYSDEC a public education and outreach program that meets the requirements in Part VII.A.1 of the effective Permit.	September 30, 2010
Submit to EPA and NYSDEC the portion of its SWMP identifying POCs, geographic areas of concern and target audiences.	September 30, 2010
Develop, implement and enforce a program to detect and address non-stormwater discharges that meets the requirements in Part VII.A.3 of the effective Permit including but not limited to:	September 30, 2010
Procedures for identifying priority areas of concern for the IDDE program;	September 30, 2010

A description of priority areas of concern, available equipment, staff, funding, etc.;	September 30, 2010
Written procedures for identifying and locating illicit discharges;	September 30, 2010
Written procedures for eliminating illicit discharges;	September 30, 2010
Written procedures for documenting actions;	September 30, 2010
Implement and enforce the Illicit Discharge Connection local law.	September 30, 2010
Develop, implement, enforce and submit to EPA and NYSDEC a construction site stormwater program that meets the requirements in Part VII.A.4 of the effective Permit, including but not limited to:	June 30, 2010
Stormwater training for municipal employees tasked with implementing the program;	June 30, 2010
Conduct regular site inspections and generate inspection reports at the City's high school demolition site, Valley View, Eastland Park and any other active construction site within the City;	June 30, 2010
Maintain records of construction site inspections for at least five (5) years after they are generated.	Immediately
Develop and implement a Pollution Prevention/Good Housekeeping for Municipal Operations program that meets the requirements in Part VII.A.6 of the effective Permit, including but not limited to:	September 30, 2010
Update the SWMP to include all municipal operations and facilities that contribute or potentially contribute POCs to the MS4, including privately owned land where City stockpiles are stored, and submit the updated SWMP to EPA and NYSDEC;	September 30, 2010
Submit to EPA and NYSDEC a written explanation for why self assessments have not been conducted as required;	June 30, 2010
Perform a self assessment of all municipal operations addressed by SWMP to determine sources of pollutants and identify the municipal operations and	September 30, 2010

facilities and submit a copy of the audit report to EPA and NYSDEC;

Develop and implement management practices to reduce or prevent the discharge or (potential) pollutants from municipal operations and facilities such as spill response procedures;	June 30, 2010
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Document and maintain regular records of street sweeping, catch basin maintenance and other debris removed to track and evaluate Good Housekeeping Program effectiveness;	June 30, 2010
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Good Housekeeping training for municipal employees tasked with implementing the program;	June 30, 2010
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Implement effective good housekeeping practices at the salt storage pile.	Immediately
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Provide EPA with quarterly updates on relocation of salt storage pile.	Quarterly, starting June 30, 2010
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Submit quarterly progress reports to EPA and NYSDEC outlining all activities undertaken and costs associated with compliance with this Order.	Quarterly, starting September 30, 2010
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Submit a final report to EPA and NYSDEC summarizing all activities taken to comply with this Order.	Within 3 months of the last quarterly progress report
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4. Any document submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR § 122.22), and shall include the following certification:

“I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.”

5. All information required to be submitted by this Order shall be sent in accordance with the paragraph above to the following addresses:

Justine Modigliani, Team Leader
NPDES Team
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

Joseph DiMura, P.E.
Director, Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

E. General Provisions

1. This order does not constitute a waiver from compliance with or a modification of the effective terms and conditions of the Act, its implementing regulations, and the MS4 General Permit, which remain in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance with the Act. Issuance of an Administrative Order shall not be deemed an election by EPA to forgo any civil or criminal actions that would seek penalties, fines or other appropriate relief under the Act.
2. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties up to \$37,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).
3. The terms of this Order shall be effective and enforceable against Respondent upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated:

6/3/2010

Signed:



Dore LaPosta, Director



Division of Enforcement and Compliance Assistance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

City of Rensselaer
62 Washington Street
Rensselaer, NY 12144

SPDES Permit No. NYR20A125

Proceeding pursuant to Sections 308(a) and
309(a) of the Clean Water Act, 33 U.S.C.
§§1318(a) and 1319(a)(3)

RESPONDENT

ADMINISTRATIVE
COMPLIANCE ORDER

CWA-02-2010-3032

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an official of the City of Rensselaer with the title of,

_____, do hereby acknowledge the receipt of copy of the

ADMINISTRATIVE ORDER, City of Rensselaer CWA-02-2010-3032.

DATE: _____

SIGNED: _____